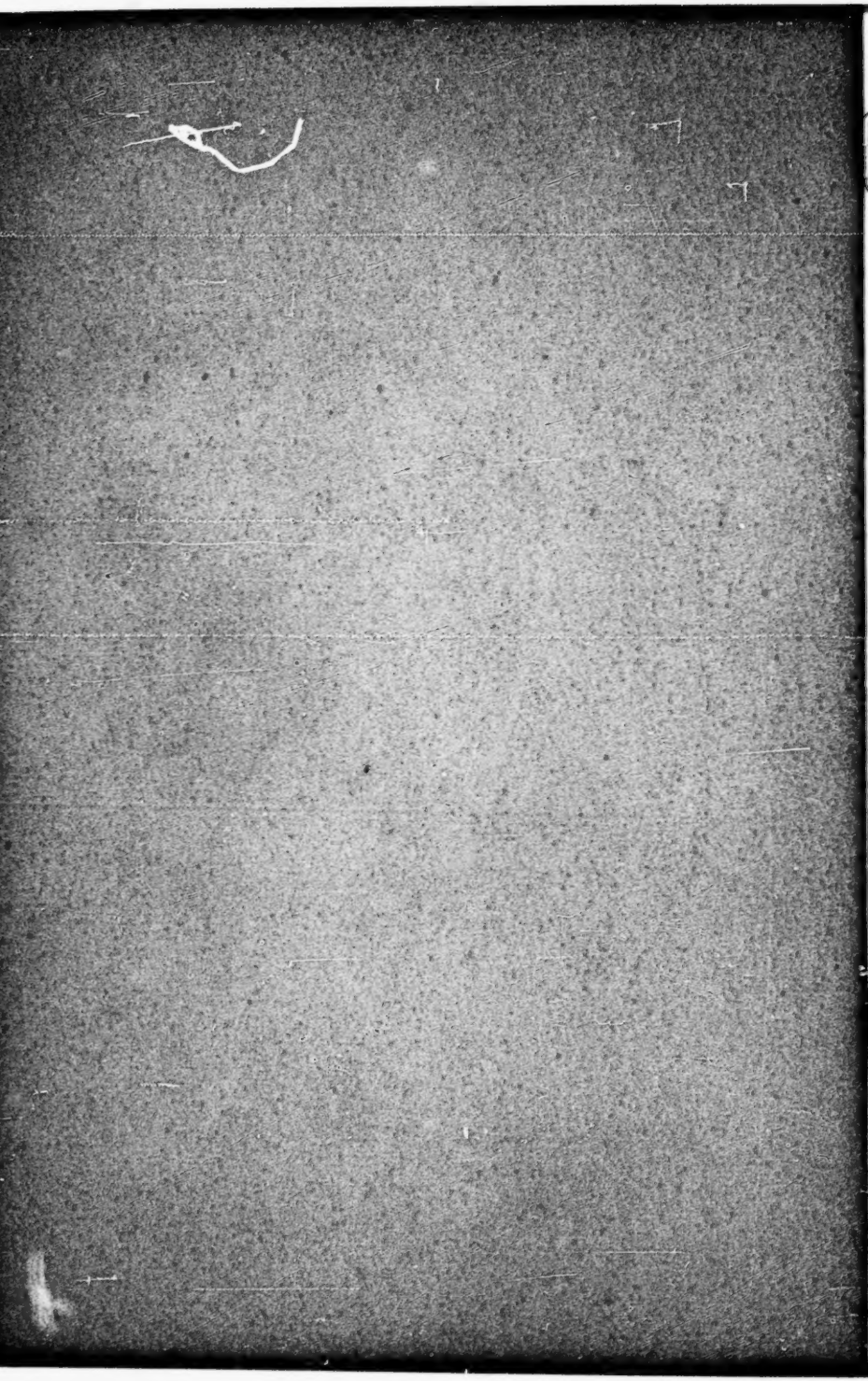

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-74

RONSON CORPORATION,

Petitioner,

—against—

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN, LOEB & CO., D. F. KING & CO., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI AND MICHELE SINDONA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT KUHN, LOEB & CO. IN OPPOSITION

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September 5, 1974.

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BRIEF FOR RESPONDENT KUHN, LOEB & CO. IN OPPOSITION

Respondent Kuhn, Loeb & Co. ("Kuhn Loeb") opposes Ronson Corporation's ("Ronson") petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit. Kuhn Loeb was the "dealer-manager" of the cash tender offer in question. None of Ronson's grounds for review is directed to any conduct of Kuhn Loeb.

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether the court of appeals erred in affirming the denial of a permanent injunction designed to block a cash tender offer where the district court found that:

(1) After seven months of discovery, petitioner failed to prove any of the material allegations of the complaint; and

(2) The offer to purchase, as restated to meet petitioner's objections, fully disclosed the material facts without omission or misrepresentation.

COUNTERSTATEMENT OF THE CASE

On May 31, 1973, Liquifin Aktiengesellschaft ("Liquifin") announced its intention to make a cash tender offer for a controlling interest in Ronson common stock. On June 5, 1973, Ronson commenced this action and obtained an ex parte temporary restraining order. On July 3, 1973, the district court granted a preliminary injunction staying the solicitation and purchase of stock pursuant to the offer. After full and exhaustive discovery, however, Ronson was unable to show that the Restated Offer to Purchase contained material misrepresentations or omissions or was otherwise unlawful in any respect. Accordingly, on January 11, 1974, the district court vacated the preliminary injunction and denied petitioner's application for a permanent injunction. That decision was unanimously upheld by the Third Circuit, which also denied a petition for rehearing and a suggestion for rehearing en banc. Mr. Justice Brennan denied Ronson's application for a stay pending appeal. The offer expired in May, 1974, and Liquifin purchased about 36% of the outstanding common stock of Ronson.

Petitioner makes three claims:

(1) Having failed to make its case at trial, Ronson urges the novel theory that sanctions ought to

be imposed for "repeated disclosure shortcomings" (Pet. p. 6) even assuming that the Restated Offer to Purchase was in all respects complete and accurate;

(2) Ronson was denied some of the discovery it sought; and

(3) Since Ronson was unable to prove that the Offer was misleading or untruthful, the burden at trial ought to have been upon respondents to show that it was not.

The opinion of the district court denying Ronson's application for a permanent injunction (Pet. App. p. 52) effectively and correctly refutes each of those claims.

ARGUMENT

1. Tender offers for corporate stock are not, as Ronson's petition suggests, inherently wicked devices for "raiding" corporations. On the contrary, they can be a means of challenging indolent or incompetent management under whose regime a corporation's income and the price of its stock has fallen to a level below that at which the offeror thinks the corporation could be operated with new management. Far from representing a danger to the corporate community, the tender offer provides a healthy encouragement to incumbent management to be mindful that its incumbency depends on the confidence of its shareholders. A tender offer provides one of the few means "by which investors . . . can . . . oust the present management" of a corporation and, hence, it affords "machinery for discouraging management from deflecting an inappropriate portion of the firm's net income from the shareholders to itself." R. POSNER, ECONOMIC ANALYSIS OF LAW, p. 181 (1972).

The Williams Act, 15 U. S. C. § 78m(d), (e); § 78(d)-(f)(1970), sets forth the guidelines under which tender offers may proceed, and describes the disclosures that must be made by the offeror. It reflects the will of Congress that accurate and complete disclosure of material facts must be made, sufficient to enable stockholders to make an informed investment decision. It is not, and was not intended to be, a tool by which entrenched management can fend off all challengers.

Ronson makes no claim here that the Restated Offer to Purchase was incorrect, misleading, incomplete or otherwise in violation of the dictates of the Williams Act. Rather, Ronson claims that unprecedented procedures ought to be employed here to assure the continued tenure of its incumbent management. Throughout this litigation, Ronson has attempted to pervert the Williams Act into something it was never meant to be, an impenetrable shield behind which management can forever hide.

The record exposes Ronson's tactics. Having obtained a preliminary injunction based on unproven charges that alleged very serious violations of the law, Ronson then used every possible means to forestall the day on which it would be called upon to prove them. For example, it changed attorneys on the eve of trial, and sought a postponement for that reason. It tried to reopen discovery that had already been exhaustively pursued. When that failed, Ronson argued that the burden of proof was on the defendants.

2. Ronson asserts that "the danger of ['takeover'] bids by foreign citizens has been increasingly realized" and urges this Court to consider proposed legislation now pending in Congress that may "restrict foreign investment in the United States" (Pet. p. 6). Those assertions are utterly irrelevant. The operative statute is the Wil-

liams Act. In order to prevail, Ronson had to demonstrate that the Restated Offer to Purchase violated the Williams Act, not bills pending before Congress.

3. Ronson asserts that different rules ought to be applied in tender offers by foreign corporations, and unashamedly states that unlike domestic offerors, foreign offerors operate "beyond the reach of regular court process" and have "little to fear beyond costs of litigation and printing . . ." (Pet. p. 7). Whatever the significance of that claim, it simply bears no relation to the facts. The "foreign" offeror is now in court. It has been in court throughout this litigation. Indeed, it was effectively restrained and thoroughly examined promptly after the commencement of this action; depositions were taken not only in New York and New Jersey, but in Milan and Rome as well. Moreover, Liquifin filed with the Securities and Exchange Commission all of the papers that it was required by law to file. As the district court cogently observed, "throughout these proceedings it has been obvious that the foreign defendants are subject to this nation's securities laws. If they chose not to furnish certain information, they could be faced with a choice between revealing such information or having the lawful restraints of this Court continued against them" (Pet. App. p. 56).

4. Ronson asserts that it was erroneously denied additional discovery before trial. The simple truth is that all of the relevant facts had been revealed from the outset, and Ronson's several teams of lawyers were afforded the widest latitude in attempting to refute them, both in the United States and abroad. In fact, very little of consequence ever resulted from Ronson's discovery efforts. For example, Liquifin did not, as Ronson states, "concede" that Liquifin

was owned by Liquigas; it affirmatively asserted it in the original Offer to Purchase. Similarly, Liquifin did not "concede" that Mr. Ursini controlled Liquigas; it asserted it. Both of those relationships were fully disclosed before the commencement of this action, and have never been disproved.

Among the depositions that Ronson counsel sought to reopen in September 1973 was that of Alvin E. Friedman of Kuhn Loeb. Mr. Friedman was the Kuhn Loeb partner responsible for the management of the tender offer. His deposition was commenced less than twenty four hours after the complaint was filed, and was protracted through five sessions and 298 transcript pages. The final session of the Friedman deposition was held pursuant to the following stipulation:

> "MR. RIFKIND: Mr. Matthews, Mr. Friedman has been deposed on three prior occasions by three different lawyers representing Ronson. Other representatives of Kuhn, Loeb have been deposed on four prior occasions in two cities by, I don't know how many representatives of Ronson. In light of that background, we have agreed to this further and final installment of the deposition of Kuhn, Loeb upon your representation that the interrogation today will be limited to five subjects which you outlined to me; that it would not repeat any of the matters that have been previously taken up and that it could be confined to a period of not more than an hour.
>
> "MR. MATTHEWS: That is true, I think, except with one minor modification. I think we have taken depositions of four Kuhn, Loeb people, Mr. d'Urso, Mr. Gruss, Mr. Zanard and Mr. Friedman." (Friedman dep. 256-57).

Furthermore, at the close of the deposition, the following colloquy took place (at p. 298):

> "MR. RIFKIND: Have you completed the deposition of Mr. Friedman?
>
> "MR. MATTHEWS: Yes."

Despite the stipulation of Ronson's counsel, Ronson's trial attorneys tried unsuccessfully to reopen the Friedman deposition. On the state of the record, the district court's refusal to permit further, cumulative and irrelevant discovery did not represent, as Ronson characterizes it, "an inexplicable change in attitude" (Pet. p. 4) but instead an assertion that Ronson's game of protraction would no longer be tolerated. In view of the fact that the tender offer had already been stayed for months by a preliminary injunction, the district court was entirely correct in requiring Ronson's new lawyers to specify exactly who they wished further to examine, and precisely why, before permitting any more dragnet discovery.

5. What Ronson in truth objects to is not that it did not have adequate discovery or sufficient opportunities to prove its case, but that its discovery and its proof did not disclose the facts as it wished and had previously insinuated them to be. All of Ronson's claims have been heard and reheard below by courts that were intimately familiar with all of the obscurity and elusiveness of its arguments; there is no good reason why they should again be heard in this Court.

CONCLUSION

For the reasons stated above and in the brief in opposition filed by respondents Liquifin *et al.*, we respectfully submit that the petition for a writ of certiorari should be denied.

September 5, 1974.

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